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FILED
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7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA CV-N-02-0458-HDM-RAM

9 * * *

10 JEFFREY E. VAN NEST,

CASE NO.

11 Plaintiff,

COMPLAINT AND JURY DEMAND

12 vs.

13 JOE MACKEY, an individual, CARL
14 RUSCHEMEYER, an individual, ROBERT
15 NUNEZ, an individual, DOUGLAS COUNTY,
16 A political subdivision of the State of Nevada,

Defendants.

17 Plaintiff for his Complaint against Defendants, complains and avers as follows:

18 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

19 2. Plaintiff was employed as a utility operator in the router and waste water public
20 service of the county. He was employed for 3 ½ years.

21 3. In 1999, Defendant Joe Mackey was reported by Plaintiff to the Douglas County
22 Employee's Association with respect to his conduct towards Dave Rite and Josh Joiner. It is
23 believed that he received minor discipline. Since that time, Mackey has disciplined Plaintiff
24 in an unwarranted fashion and in a fashion dissimilar from those similarly situated who did not
25 report Joe Mackey.

26 4. Plaintiff's reporting of Joe Mackey was speech on a matter of public concern,
27 invoking Plaintiff's right to free speech under the First Amendment and right to petition for
28 redress of grievances under the First Amendment and right to associate under the First

2.

1 Amendment.

2 5. This discipline included a suspension for a paperwork discrepancy where
3 telephone records will show there was no discrepancy. This discipline was appealed but
4 upheld by the City Manager.

5 6. There was another attempted suspension.

6 7. Plaintiff brought his concerns regarding what he reasonably and in good faith
7 perceived to be retaliation for his reporting Mackey in the form of this unwarranted discipline
8 and hostile and abusive working environment to Defendants Ruschemeyer and Nunez.
9 Ruschemeyer did nothing. Nunez advised "bring it to me and it stops." It never stopped.
10 Based upon this, Plaintiff is informed and believes that Defendants Ruschemeyer and Nunez
11 ignored Plaintiff's complaints and failed to conduct any reasonable investigation or pursue any
12 reasonable remedy of the complaints.

13 8. Plaintiff was terminated from his employment with Douglas County on or about
14 November 1st, 2001. This took place a week before Mackey was to resign and the week
15 Plaintiff was gone.

16 9. The termination was based upon criminal charges that had been brought
17 against Plaintiff by the District Attorney of Douglas County. Plaintiff was charged with the
18 equivalent of wrongfully taking a waste water sample. With respect to the sampling
19 procedure, Defendant Mackey approved all paperwork going to the State of Nevada which
20 Plaintiff had provided. Mackey's job was to review and approve all paperwork before it goes
21 to the State of Nevada. Markings on the original are made by Mackey showing that he did in
22 fact review the subject report.

23 10. Those criminal charges against Plaintiff were dismissed.

24 11. Plaintiff pursued a grievance with respect to his termination through the union.
25 Following dismissal of the criminal charges, Plaintiff sought reinstatement through the union
26 with backpay. Defendant Douglas County reinstated Plaintiff to a different position, with less
27 pay overall and less responsibilities, and with a written reprimand, all of which are retaliatory.

28 12. Defendant Mackey has been heard stating, "This is the way of get rid of Jeff"

1 and that he "Told Carl and Bob it's either Jeff or me." Plaintiff is also informed and believes
2 that Mackey has a pattern and practice of engaging in similar vendettas against disfavored
3 employees who speak out against him with the County and with other previous employers.
4 Should Plaintiff discover in the course of this action that others in management within the
5 County knew of this pattern and practice and failed to take steps to prevent future conduct of
6 a violative nature, Plaintiff reserves the right to seek leave to amend to add those parties as
7 a Defendant with additional claims relating to that.

8 FIRST CLAIM FOR RELIEF

9 13. Plaintiff refers to and by such reference incorporates herein each, every and all
10 averments contained in paragraphs 1-12 hereinabove as though fully set forth at this point.

11 14. Defendant Mackey retaliated against Plaintiff intentionally by engaging in the
12 aforementioned discipline and adverse employment actions and by creating a hostile and
13 abusive working environment, which collectively and separately constituted adverse
14 employment actions, motivated by a desire to retaliate for Plaintiff's protected speech, petition,
15 and association, subjecting Defendant Mackey to liability under 42 U.S.C. §1983 for past and
16 future general damages, including lost wages, benefits, attorney's fees, harm to reputation,
17 loss of enjoyment of life, interruption of career, emotional distress, mental anguish, anxiety,
18 depression, apprehensiveness, reasonable fear of suffering violations to his rights in the
19 future with Douglas County, entitling Plaintiff to damages in sums to be proved at trial.

20 15. The conduct of Mackey was deliberately indifferent and malicious, entitling
21 Plaintiff to punitive damages under 42 U.S.C. §1983.

22 SECOND CLAIM FOR RELIEF

23 16. Plaintiff refers to and by such reference incorporates herein each, every and all
24 averments contained in paragraphs 13-15 hereinabove as though fully set forth at this point.

25 17. Defendants Ruschemeyer and Nunez had knowledge of the violation of
26 Plaintiff's constitutional rights aforementioned and had the opportunity to intercede to prevent
27 those violations from occurring and continuing.

28 18. These Defendants had a duty to intercede and failed to do so.

19. The failure to intercede entitles Plaintiff to the same damages against these Defendants under 42 U.S.C. §1983.

THIRD CLAIM FOR RELIEF

20. Plaintiff refers to and by such reference incorporates herein each, every and all averments contained in paragraphs 16-19 hereinabove as though fully set forth at this point.

21. Defendants Ruschemeyer and Nunez are managerial employees of the County.

22. In that capacity, they knew of and approved and authorized the conduct of Defendant Mackey.

23. By virtue of this ratification and authorization, and their supervisory status, these Defendants are subject to supervisory liability under 42 U.S.C. §1983 for the same damages.

FOURTH CLAIM FOR RELIEF

24. Plaintiff refers to and by such reference incorporates herein each, every and all averments contained in paragraphs 20-23 hereinabove as though fully set forth at this point.

25. Plaintiff is informed and believes that Defendant Mackey caused Plaintiff's arrest and prosecution by providing false information material to the elements of the crime charged.

26. Mackey did this with malice.

27. Mackey did this without probable cause.

28. The prosecution terminated in Plaintiff's favor.

29. Mackey did this in connection with the aforementioned constitutional violations, giving rise to liability for the constitutional tort of malicious prosecution plus, which is in effect a denial of due process under the procedural due process clause of the Fourteenth Amendment to the United States Constitution, entitling Plaintiff to the same damages.

FIFTH CLAIM FOR RELIEF

30. Plaintiff refers to and by such reference incorporates herein each, every and all averments contained in paragraphs 23-29 hereinabove as though fully set forth at this point.

31. Defendant Douglas County terminated Plaintiff's employment based upon information that it knew or should have known was false.

33. These statements were defamatory *per se*.

34. Plaintiff has been forced to repeat the statements in order to explain his departure from employment and circumstances relating thereto, and may be required to do so in the future if he is not reinstated and a satisfactory resolution reached.

35. As a result of the defamation by Douglas County and the self defamation required of Plaintiff, Plaintiff is entitled to damages for harm to reputation, presumed damages, and such other and further damages, including emotional distress and punitive damages, as a jury may award.

SIXTH CLAIM FOR RELIEF

(RESERVED)

36. Plaintiff refers to and by such reference incorporates herein each, every and all averments contained in paragraphs 30-35 hereinabove as though fully set forth at this point.

37. Plaintiff reserves the right to seek leave to amend with respect to the failure of Defendant to provide him with procedural due process prior to depriving him of the state created property interest he has in his employment and failure to provide him with a name-clearing hearing to address the stigma resulting from the manner in which he was terminated.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants, jointly and severally, as follows:

1. For general damages in sums to be proved at trial
 2. For special damages in sums to be proved at trial;
 3. For nominal damages;
 4. For punitive damages;
 5. For reasonable attorney's fees and costs of suit pursuant to 42 U.S.C. §1988;
- and

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1 6. For such other and further relief as the Court deems just and proper.

2 DATED 8/30/02

3 LAW OFFICE OF
4 JEFFREY A. DICKERSON

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6 JEFFREY A. DICKERSON
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